IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.909 of 2003

Ayyanamurthy .. Petitioner

Vs.

State by
The Sub-Inspector of Police,
Keevalur Police Station,
nagapattinam,
(Cr.No.520/1998) .. Respondent

Prayer:- This revision has been preferred against the judgments dated 20.3.2003 in C.A.No.7 of 2003 passed by the learned District Principal Sessions Judge, Nagapattinam, modifying the judgment in STC.No.1061 of 2002 on the file of the Judicial Magistrate, Nagapattinam, dated 08.01.2003.

For Petitioner :Mr.M.Vijayaraj

For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

The judgment passed in C.A.No.7 of 2003 on the file of the Principal Sessions Judge, Nagapattinam, is under challenge in this revision. The accused is a driver in Tamil Nadu Transport Corporation bus. On 5.9.1998 at about 10.00 am, the accused while driving the State transport Corporation bus bearing Registration No.TN-29-N-0491 from Nagapattinam to Tiruvarur in a rash and negligent manner while overtaking another bus proceeding in front of him had dashed against a tree on the right side of the road causing injuries to P.W.1-Aruldass, a passenger in the said bus at that time. The accused has been charged under Sections 279 & 338 IPC.

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2.The learned Judicial Magistrate, after taking cognizance of the offence, took the case on file as STC.No.1061 of 2002 and issued summons to the accused. On appearance of the accused, the learned Judicial Magistrate has furnished copies under Section 207 of Cr.P.C, and when charges were framed and questioned, the accused pleaded not guilty. Before the trail Court, P.W.1 to P.W.9 were examined and Ex.P.1 to Ex.P.7 were exhibited. No material objects marked.

3.P.W.1 is the injured Aruldass. According to him, the accident had occurred 2 kms away from Kilvaur at the Tiruvarur Nagapattinam main road while he was proceeding in the said Tamil Nadu State Transport Corporation bus bearing registration No.TN-29-N-0491. According to him, he was sitting on the rear side of the bus along with his family and that the driver of the bus, the accused herein, while overtaking another bus which was proceeding in the same direction, had driven the bus rashly and negligently and dashed against the tree which was standing on the right side of the road resulting grievous injuries on his right upper hand and that he had preferred Ex.P.1-complaint, after he was discharged from the hospital.

4.P.W.2 is the wife of P.W.1. She would depose that at the time of occurrence, she was also traveling along with P.W.1, her husband in the same bus, and the accused, the driver of the ill-fated bus, while overtaking another bus had dashed against a tree standing on the right side of the road resulting the glass in the window pan got broken, fell on the right hand of her husband P.W.1 causing grievous injury and that P.W.1 was taken to government hospital at Tanjure by the accused in the same bus.

5.P.W.3 is the Motor Vehicle Inspector, who had inspected the ill-fated bus on 6.3.1999 at 13.45 hours and issued Ex.P.2-certificate stating that there is no mechanical defect in the bus, which involved in the accident.

6.P.W.4 is the conductor of the bus which involved in the accident. He has supported the case of the prosecution. He was treated as a hostile witness.

7.P.W.5 is the the Sub-Inspector of Police Keevelur Police Station, who had registered the case on the basis of Ex.P.1-compalint under Keevelur police station Cr.No.520 of 1998 under Section 279 & 338 IPC. Ex.P.3 is the copy of FIR. He had visited the place of occurrence and had drawn a rough sketch Ex.P.4 and has prepared an observation mahazar Ex.P.5 in the presence of P.W.6. The trip sheet for the ill-fated bus bearing registration No.TN-29-N-0491 is Ex.P.6. He has examined the witnesses. But the statements have already been recorded by P.W.8, the head

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constable, who had made initial investigation in this case. He had arrested the accused and released on bail on 6.3.1999. He has obtained wound certificate from the doctor, who had examined P.W.1 after the occurrence. P.W.8 is the head constable, who had recorded the statement of P.W.1

8.P.W.7 is the successor of P.W.5, who after completing the investigation had filed the charge sheet against the accused.

9.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. He has not examined any witness on his side. After going through the evidence both oral and documentary, the learned trial Judge has come to the conclusion that the charges under Section 279 & 338 levelled against the accused have been proved beyond any reasonable doubt by the prosecution and accordingly convicted the accused under Section 279 & 338 IPC and sentenced the accused to undergo 1 week SI and slapped a fine of Rs.750/- under Section 279 IPC and sentenced the accused to undergo 1 week SI and levied a fine of Rs.1,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused preferred an appeal in C.A.No.7 of 2003 before the Principal Sessions Judge, Nagapattinam, who after due deliberations and after scanning the evidence, has modified the sentence imposed by the trial Judge by setting aside the sentence of 1 week SI while confirming the fine imposed by the learned trial judge under Section 279 and 330 IPC, which necessitated the accused to prefer this revision.

10.Heard the learned counsel appearing for the revision petitioner Mr.M.Vijayaraj and the learned Additional Public Prosecutor Mr.V.R.Balasubramanian and considered their respective submissions.

11.Now the point for determination in this revision is whether the conviction and sentence of the learned first appellate Judge in C.A.No.7 of 2003 on the file of the Principal Sessions Judge, Nagapattinam, is sustainable for the reasons stated in the memorandum of revision?

12.The Point:- The learned counsel for the revision petitioner would take me through the entire evidence of the prosecution witnesses and also pointed out the discrepancies made in the statement of P.W.1 before the Court and before the doctor, who had examined him. The doctor, who had examined P.W.1, the injured, was not examined in this case. But the copy of the accident register alone has been marked as Ex.P.7 through Investigating Officer P.W.5. In Ex.P.7 it has been noted by the doctor, who had examined P.W.1 for the injury sustained by P.W.1, as alleged to have been sustained in moving bus at Veevalur around 4.00 am on 5.9.1998. But as per Ex.P.3, FIR, the occurrence is said to have occurred at 9.10 am on 5.9.1998.

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Admittedly the FIR was lodged only on 16.9.1998 ie., 11 days after the occurrence. The reason given in the evidence of P.W.1 is that soon after the occurrence he was admitted in the Government Medical College hospital at Tanjure by the driver and conductor of the bus which involved in the accident and that only after the discharge from the hospital he had preferred the complaint. It is seen from Ex.P.3-FIR that P.W.1 was discharged from the hospital on 12.9.1999 itself. But the FIR was lodged only on 16.9.1998. There is no explanation forthcoming from the side of the prosecution why the intimation was not sent from the hospital to the concerned police even after the admission of P.W.1 in the Tanjore Medical College Hospital on 5.9.1998 as an inpatient in ward No.5. The learned Additional Public Prosecutor would fairly concede that according to the complaint preferred by P.W.1, he had sustained injuries due to the fall of glass pieces from the window pan of the bus due to the impact of hit against the tree at the time of occurrence. But no glass pieces were recovered from the place of occurrence under mahazar by the police and produced before the trial Court. Further it is the case of the prosecution that while overtaking another bus the accused had dashed against the tree, which was standing on the right side of the road at the place of occurrence at Tiruvarur Nagapattianam main road. The learned counsel for the revision petitioner would point out the deposition in the cross-examination of P.W.1 wherein he had admitted that there was no trees at the place of occurrence. P.W.1 would depose in the cross-examination that eventhough he is having the habit of taking drinks, on the date of occurrence he has not consumed any liquor. But in Ex.P.7 copy of the accident register the doctor has entered that P.W.1 was under the influence of Alcohol. Under such circumstances, it cannot be said that the prosecution has proved the guilt of the accused beyond any reasonable doubt. Point is answered accordingly.

13.In the result, the revision is allowed and the conviction and sentence imposed by the learned first appellate Judge in C.A.No.7 of 2003 against the accused under Section 279 & 338 IPC are set aside and the accused is acquitted of the charges levelled against him. Fine if any paid shall be refunded to the accused.

ssv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To,

1.The District Principal Sessions Judge,
Nagapattinam.

2.The Judicial Magistrate,
Nagapattinam.

3.-do-the Chief Judicial Magistrate,
Nagapattinam.

4.The Public Prosecutor,
High Court, Madras.

5.The Sub-Inspector of Police,
KeeValur Police Station,
Nagapattinam.
(Cr.No.520 of 1998)

+ ONE CC TO MR. N. VIJAYARAJ, ADVOCATE SR NO. 50208

nm(21.08.07)

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